JESSE R. COLLINS ET AL.

IBLA 95-127 Decided July 30, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. CAMC 247295 and CAMC 247296.

Affirmed.

1. Mining Claims: Lands Subject To--Mining Claims: Placer Claims

   A placer mining claim located on land closed to mineral entry is properly declared null and void ab initio.

2. Administrative Authority: Laches--Estoppel--Laches

   The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by laches, neglect of duty, failure to act, or delays in the performance of duties.

APPEARANCES: Jesse R. Collins, Barstow, California, for himself and Mildred E. Collins, Robert J. Collins, and Deborah J. Collins.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jesse R. Collins, Mildred E. Collins, Robert J. Collins, and Deborah J. Collins have appealed a determination of the California State Office, Bureau of Land Management (BLM), dated October 27, 1994, which, inter alia, declared the Pink Lady #5 and #6 placer mining claims, CAMC 247295 and CAMC 247296, null and void ab initio on the grounds that the claims were located on land not then open to mineral location. 1/

Notices of location for the subject claims were filed with BLM on September 23, 1991. These notices stated that the claims had been located

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1/ While BLM also held that the Pink Lady #5 was fragmented by a Federal Aid Highway right-of-way and, assuming this claim was not null and void ab initio, would have been subject to review under the principles set forth in Robert J. Collins, 129 IBLA 341 (1994), and Jesse R. Collins, 127 IBLA 122 (1993), we need not reach this issue since, as the text subsequently shows, that claim, in its entirety, was properly declared null and void ab initio.

by the Collins on land within sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian, San Bernardino County, California, on September 18, 1991. In invalidating the claims, BLM noted that all of section 4 had been segregated from location under a withdrawal published in the Federal Register on June 6, 1991. See 56 Fed. Reg. 26137. Accordingly, BLM concluded that the claims were null and void since they had been located on land not then open to mineral entry.

Appellants in their statement of reasons do not assert that the land was, in fact, open to entry when they located their claims. Rather, they argue that they have worked these claims, paid the required fees, and discussed them with BLM and should not now be penalized because BLM was not diligent in notifying them of the withdrawal of land. They contend that "[i]t is incredible that during the over 3 years lapse * * * no one discovered the error nor informed/advised us of the withdrawal." See Statement of Reasons for Appeal at 3.

[1] As an initial matter, we note that it is well established that a mining claim located on land closed to entry under the mining laws confers no rights on the locator and is properly declared null and void ab initio. See Lucian B. Vandegrift, 137 IBLA 308 (1997); Merrill G. Memmott, 100 IBLA 44 (1987). Our review of the record clearly establishes that the land embraced by the two mining claims was not open to mineral entry as of the date of the location of the claims. Thus, the June 6, 1991, Notice clearly identified all available land in sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian, as included among the parcels of land being considered for exchange and further expressly noted that "[i]n accordance with 43 CFR 2201.1(b) [(1991)], publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws * * *." 56 Fed. Reg. 26139 (June 6, 1991). Inasmuch as it is uncontroverted that the two claims involved herein were located after June 6, 1991, while the segregation effected by this withdrawal was still outstanding, it must follow that these two claims were null and void ab initio.

[2] The gravamen of the complaint herein appears predicated in the Collins' view that, due to its delay in acting upon the location notices for these two claims which had been filed with BLM under section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994), BLM should be estopped from declaring the claims void. We cannot agree.

While BLM employees regularly provide assistance to those interested in acquiring rights under the mining laws, the fact remains that it is ultimately the responsibility of those seeking to assert rights to land to correctly ascertain the true status of the land on which they desire to locate mining claims. See Dean Staton, 136 IBLA 161 (1996); Shama Minerals, 119 IBLA 152, 154 (1991). This is a responsibility which they may not shift to BLM.

Moreover, while it is unfortunate that BLM did not advise the Collins of the location problem with these two claims sooner, we must point out that the applicable regulation, 43 C.F.R. § 3833.5, expressly advises claimants that

> [f]ailure of the government to notify an owner upon his filing or recordation of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

See generally, Washington Prospectors Mining Association, 136 IBLA 128 (1996).

As an additional matter, estoppel will not lie here because all mineral claimants are properly charged with constructive knowledge of the Federal Register notice segregating the lands from entry under the mining laws. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); James A. Becker, 138 IBLA 347 (1997). Thus, an essential predicate of the invocation of estoppel, i.e., that the claimants did not know the true facts, cannot be established in this appeal. See United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970); John Plutt, Jr., 53 IBLA 313, 319 (1981).

Finally, since the invocation of the defense of laches or estoppel in this case would result in the grant of a right not authorized by law (the location of mining claims on land not open to mineral entry), it cannot be permitted. See, e.g., Ptarmigan Co., 91 IBLA 113 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991).

Since the land on which the subject mining claims were located was clearly segregated from mineral entry by published notice at the time of location, it was altogether proper for BLM to declare these mining claims null and void ab initio.

Accordingly, pursuant to authority delegated to the Board of Land Appeals by the Secretary of the Interior, BLM's declaration that the Pink Lady #5 and #6 placer mining claims are null and void is affirmed.

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James L. Burski
Administrative Judge

I concur:

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C. Randall Grant, Jr.
Administrative Judge